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NO. 91-747 (2)

In the Supreme Court of the United States

October Term, 1991

OCEAN DRILLING & EXPLORATION COMPANY (ODECO),
Petitioner

v.

DIMENSIONAL OILFIELD SERVICES, INC.,
Respondent

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Respondent respectfully prays that petitioner's application for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled proceeding on February 11, 1991, with subsequent panel rehearing denial on August 9, 1991, be denied.

STATEMENT OF THE CASE

In the interest of brevity, and pursuant to Supreme Court Rule 24.2, Respondent adds the following particular facts.

On August 27, 1983, Dimensional[1] and ODECO entered into a Master Service Agreement for the provision of services to ODECO's oil and gas drilling and exploration operations. Unlike the traditional scheme of offshore exploration, ODECO occupied the position of both the operator and the drilling contractor. Pursuant to that master agreement, ODECO, as operator, issued a work order to Dimensional, on or about September 9, 1987, for the provision of wireline services in connection with ODECO's development of an oil and gas well on the Outer Continental Shelf. This contract between ODECO and Dimensional was not a vessel charter. Dimensional's principal obligation under the contract was to provide wireline services to the well, not to contribute to the function of a vessel.

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[1]Dimensional Oilfield Services, Inc. is a privately owned singular entity with no subsidiaries or parent company.

SUMMARY OF THE ARGUMENT

The Fifth Circuit's application of state law to the ODECO/Dimensional contract for wireline services is consistent with prior holdings of the United States Supreme Court relating to the non-maritime nature of oil and gas activities, and to the characterization of contracts pertaining to such activities.

The nature of a non-maritime activity is not altered by the incidental presence of a vessel. Wireline services are peculiar to the oil and gas industry and are therefore non-maritime in nature. Such contracts are better enforced under state law.

A writ of certiorari to the United States Court of Appeals for the Fifth Circuit is unnecessary in the absence of a conflict between the existing law and the holding at issue. The Fifth Circuit and the Louisiana Supreme Court have uniformly ruled that whether a particular contract can be characterized as maritime depends on the nature and character of the contract, not on the situs of its performance or execution. Characterizing all wireline service contracts as non-maritime will provide for the uniform application of law to these contracts. To allow contracts to be characterized as maritime simply because a vessel is associated with the contract would create uncertainty in the assessment of contractual liabilities. This practice will allow the situs of the performance of a service rather than the nature of the service itself to determine the nature of a contract. Such a result is contrary to the basic principles previously espoused by this Court. Suggesting that there is no conflict to be reviewed, the respondent now prays that Petitioner's application for writ of certiorari to the United States Court of Appeals for the Fifth Circuit be denied.

REASONS WHY WRIT SHOULD BE DENIED AND ARGUMENT

A.

THE APPLICATION OF STATE LAW TO THE ODECO/DIMENSIONAL WIRELINE CONTRACT IS CONSISTENT WITH THE BASIC PRINCIPLES RELATING TO THE NON-MARITIME NATURE OF OIL AND GAS ACTIVITIES, AND TO THE CHARACTERIZATION OF CONTRACTS PERTAINING TO SUCH ACTIVITIES.

A review of the Fifth Circuit's application of state law to a contract for wireline services between ODECO and Dimensional is unnecessary in light of prior decisions of the United States Supreme Court.[2] Additionally, the Court must not be misled by Petitioner's assertion that *McDermott International, Inc. v. Wilander*[3] mandates a review of the Fifth Circuit's decision.

The Supreme Court early on focused on *the nature of the service being rendered pursuant to a contract* in order to classify the character of such contract. In *North Pacific S.S. Company v. Hall Brothers Marine Railway and Shipbuilding Company*[4] Justice Pitney stated that "it must be taken to be the settled law of this court that while in civil jurisdiction of the admiralty in matters of tort depends on locality, ..., in matters of contract it depends upon the subject matter, the

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[2]*North Pacific S.S. Company v. Hall Brothers Marine Railway and Shipbuilding Company,* 249 U.S. 119, 39 S.Ct. 221, 63 L.Ed. 510 (1919); *Herb's Welding, Inc. v. Gray,* 470 U.S. 414, 105 S.Ct. 1421, 84 L.Ed. 2d 406 (1985).

[3]*McDermott International, Inc. v. Wilander,* 498 U.S. _____, 111 S.Ct. 807, 112 L.Ed. 2d 866 (1991).

[4]249 U.S. 119, 39 S.Ct. 221, 63 L.Ed. 510 (1919)

nature and character of the contract..." Justice Pitney further explained that it mattered not that ship repairs were performed on dry dock instead of on water. The nature of services being performed remains constant regardless of where such services are rendered. It is *a fortiori* that if a maritime activity remains maritime although performed on land, then by uniform application of this rule of law, a non-maritime activity should *not* become maritime simply because it is performed on a vessel.

Petitioner's introductory characterization of the chartered course of this Court from *Kossick v. United States Fruit Co.*[5] *to Wilander, supra,* fails to consider this Court's dictates in *Herb's Welding, Inc. v. Gray.*[6] In *Herb's Welding*, this Court ruled that offshore exploration and development of oil and gas is inherently non-maritime, and that the nature of this activity is not significantly altered by the marine environment. This Court pointed out that services in association with the exploration and development of oil and gas are as easily performed on land as they are on water. Wireline services are peculiar to the oil and gas industry, and therefore, are no exception to this rule.

For the purpose of analogy, the Petitioner cites *Wilander,* supra, where the Supreme Court ruled that an employee is not precluded from seaman's status simply because he did not perform transportation related functions on the vessel in which he was working. Petitioner then expands on this narrow holding regarding seaman status to propose that the character of a contract should be determined by the extent to which the services provided by the contract contribute to the function of the vessel or to the accomplishment of its mission. However, Petitioner's analogy is incomplete in that it ignores the second criteria by

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[5]365 U.S. 731, 81 S.Ct. 886, 6 L.Ed. 2d 56 (1962).

[6]470 U.S. 414, 105 S.Ct. 1421, 84 L.Ed. 2d 406 (1985).

which seaman's status is determined. This second criteria requires that an employee seeking seaman's status must either have been permanently assigned to, or performed a substantial amount of work aboard a vessel or fleet of vessels.[7] Mere incidental association with a vessel does not a seaman make.[8] To complete Petitioner's analogy would require that the services provided pursuant to a contract be more than incidentally related to the vessel on which such services are rendered.[9]

There is no such relationship between a vessel and a contract for wireline services, especially under the facts of this case. It is important to note that ODECO occupied the position of both the operator and the drilling contractor for the development of the well in question. It is not by accident that Petitioner points out the various subsidiaries of ODECO in Footnote 1 of its writ application. In the traditional offshore scheme of developing a well, both the drilling contractor who supplies the jack-up vessel, and the wireline company are independent contractors of the operator. In this case, ODECO's dual status as both *operator* and *drilling contractor* is the exception in today's oil and gas industry. The Court's analysis should focus on ODECO's status as the *operator* because it is in this capacity that ODECO contracted with Dimensional in this case. If ODECO's jack-up

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[7] *Offshore Oil Company v. Robison*, 266 F.2d 769 (5th Cir. 1959).

[8] *Ross v. Mobil Oil Corp.*, 474 F.2d 989 (5th Cir. 1973); cert denied 414 U.S. 1012, 94 S.Ct. 378, 38 L.Ed. 2d 250 (1973); *Stokes v. B.T. Oilfield Services, Inc.* 617 F.2d 1205 (5th Cir. 1980).

[9] ODECO's effort to avail itself of *Wilander* is an attempt to draw this Court's attention away from its proper focus by the application of an inappropriate standard. By an exercise in legal contortion, ODECO has suggested to this Court that its ruling in *Wilander* mandates a finding that the Fifth Circuit's analysis is incorrect. The premise of this obfuscation of legal principles regarding seaman status and maritime contracts is misguided.

vessel had been chartered to an operator other than ODECO, there would be no contract between the vessel owner and the wireline company. The operator employs the wireline services to develop the well and produce oil and gas. The fact that the operator is also the vessel owner should in no way influence the characterization of the wireline services for which this contract was entered.

ODECO, as the operator, contracted with Dimensional for wireline services. ODECO, as the drilling contractor, supplied the jack-up vessel. The operator's interest was in the well itself, not in the fulfillment of a vessel's mission. In order to promote its interest in the well, ODECO, as operator, entered into a Master Service Contract with Dimensional pursuant to which ODECO issued a work order for wireline services. Nowhere in the master agreement was there any mention of the Ocean Conquest, nor was it contemplated by Dimensional that wireline services were being provided for the completion of a vessel's mission.

Wireline service is an activity performed in the well bore and is exclusively associated with the exploration and development of oil and gas, whether provided on dry land or on navigable waters. The objective of such services is to assist in the exploration and development of oil and gas. The fact that a vessel's mission was to drill the well in which the wireline services are performed is of no consequence to the wireline contractor. The mere fact that Dimensional performed wireline services on the Ocean Conquest did not change the character of those services.

A contract for wireline services is no more maritime in nature than is a contract to construct a stationary platform. Although both may contemplate the use of a vessel to complete the activity, the subject matter of the contract has no direct relationship with the traditional subjects of maritime law. It is fundamental that the mere inclusion of

maritime obligations in a mixed contract does not, without more, bring non-maritime obligations within the pale of admiralty law.[10] The Court in *Union Texas Petroleum Corporation v. PLT Engineering, Inc.*[11] found the same to be true for a contract to construct a pipeline on the seabed of the Gulf of Mexico. Although most of the work was performed off vessels, Judge John R. Brown of the Fifth Circuit found the contract to be non-maritime in nature. He wrote that "while some maritime operations were undoubtedly contemplated, the principal obligation of PLT and the subcontractors was to build the gathering line and connect it to the platform and the transmission line. The activities are not traditionally maritime. Rather they are the subjects of oil and gas exploration and production." In this case there does not exist even a mixed contract since there are no obligations in the ODECO/Dimensional contract that are maritime in flavor. Therefore, the Fifth Circuit's application of state law to the ODECO/Dimensional contract for wireline services is consistent with prior rulings of this Court and necessitates a denial of Petitioner's application for writ of certiorari to the United States Court of Appeals for the Fifth Circuit. Contrary to Petitioner's assertions, the Fifth Circuit's ruling herein is an effort toward consistency in its holdings rather than a diversion from uniformity.

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[10]*Laredo Offshore Constructors v. Hunt Oil Co.*, 754 F.2d 1223 (5th Cir. 1985).

[11]895 F.2d 1043 (5th Cir. 1990).

B.

THE APPLICATION OF STATE LAW TO A CONTRACT FOR WIRELINE SERVICES WOULD PROVIDE CERTAINTY IN A PARTY'S ABILITY TO PRE-ASSESS ITS POTENTIAL CONTRACTUAL LIABILITIES AND WOULD NOT IN ANY WAY AFFECT THE UNIFORMITY OR SUPREMACY OF MARITIME LAW.

With new technology and the rapid growth of the oil and gas industry came a body of law that has proven to be somewhat less than crystal clear. However, it has been the ever-constant objective of both Congress and the Judiciary to strive for certainty and uniformity in the application of the law. The Fifth Circuit helped perpetuate this objective in its decision in *Offshore Oil Company v. Robison.*[12] The criteria for seaman's status formulated by the court in *Robison* prevents a seaman from walking out of his status simply by stepping off the vessel on which he was employed.[13] The formula provides certainty to status for those who truly are entitled to be recognized a seaman.

Additionally, Congress sought to resolve a similar problem of "checker-board coverage" being faced by land based longshoremen when it amended the Longshore and Harbor Workers' Compensation Act[14] in 1972. Prior to 1972, the Act reached only those accidents occurring on navigable waters. A longshoreman or harbor worker who left the vessel in the performance of his duties often found himself outside the coverage of the Act. The 1972 amendment expressly

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[12]266 F.2d 769 (5th Cir. 1959).

[13]*Bertrand v. International Mooring and Marine, Inc.*, 700 F.2d 240 (5th Cir. 1983); cert. denied 464 U.S. 1069, 104 S.Ct. 974, 79 L.Ed. 2d 212 (1984).

[14]33 U.S.C.A. §901 et. seq.

extended coverage to "adjoining areas" adjacent to the water, where maritime workers would be likely to spend a large part of their working lives, thereby eliminating the fortuitous element of "locality" from the longshoreman's compensatory fate.

The Supreme Court is now being asked to review a decision that effectively provides to contracting parties the same uniformity and certainty previously bestowed upon seamen and longshoremen. The United States Court of Appeals for the Fifth Circuit, in keeping with the Supreme Court's decision in *Herb's Welding, supra,* has recognized in this case that a contract for wireline services is an activity associated with the exploration and development of oil and gas, and is therefore non-maritime in nature. The Fifth Circuit further recognized that the nature of such a contract is not transformed magically to maritime simply because the contract is performed in a marine setting. To hold otherwise would only create uncertainty and disrupt the uniformity long sought to be achieved by both Congress and the Judiciary.

A pre-contract assessment of liability by both parties involved in a contract would be difficult, if not impossible, to make since wireline services are typically performed both on vessels and fixed platforms. Contractual liabilities would change from minute to minute depending on where a particular service was being rendered. The Fifth Circuit in *Thurmond v. Delta Well Surveyors*[15] recognized this potential dilemma. In *Thurmond,* the wireline services were provided to a fixed stationary well jacket from a lift boat much akin to the ODECO jack-up vessel in the instant case. The use of the vessel by the wireline contractor to fulfill its own contractual obligations was not sufficient to convince

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[15]836 F.2d 952 (5th Cir. 1988); rehearing en banc denied 844 F.2d 788 (5th Cir. 1988).

Judge Wisdom that a wireline service contract should be maritime. Much like his opinion on seaman status in *Robison*, supra, Judge Wisdom looked beyond the immediate facts of *Thurmond*, to create law that would accommodate future cases involving wireline contracts.[16]

In finding that a wireline service contract was non-maritime, the court in *Thurmond* focused on the principal obligation of the contract - that being the provision of wireline services - and not necessarily upon the furtherance of the vessel's mission. The court further explained that such an obligation to perform wireline services was peculiar to the oil and gas industry, not maritime commerce. Again, it is the exploration of oil and gas that provides purpose to the contract between ODECO and Dimensional, not the fulfillment of the vessel's mission.

A review of the Fifth Circuit's decision in this case would not be a review of an intracircuit conflict as the Petitioner suggests. None of the cases cited by Petitioner in support of this contention pertain to a contract for the provision of wireline services. In the Petitioner's strongest case authority, the Fifth Circuit in *Theriot v. Bay Drilling Corporation*[17] recognized the same principle acknowledged by the court in *Thurmond*, and now being advanced by Respondent. The court in *Theriot* stated that "whether a particular contract can be characterized as maritime depends on the nature and character of the contract, not on the situs of its performance or execution." The court further recognized that "not every contract touching incidentally on a vessel will be maritime."

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[16]This Court has looked favorably upon Judge Wisdom's analysis of oilfield related matters in the *Robison / Wilander* seaman status line of cases. The Court is asked to give the same deference to Judge Wisdom's analysis in *Thurmond*.

[17]783 F.2d 527 (5th Cir. 1986).

Additionally, there is no conflict within the Circuit because *Theriot, supra*, and this case are not analogous. *Theriot* involved the charter of a vessel. Vessel charters have always been maritime contracts. Dimensional's contract with ODECO in no way involves a vessel charter. This Court should accept this important distinction. A contract to provide oil and gas related services as its principal obligation is, in and of itself, a non-maritime activity.

Additionally, Petitioner's contention that the Louisiana Supreme Court is in conflict with the Fifth Circuit's application of state law in this case is not well founded for two obvious reasons. First, contrary to Petitioner's assertion, the issue of whether a contract for oil and gas drilling aboard a vessel in navigable waters is a maritime contract was not decided by the Louisiana Supreme Court in *Rodrigue v. LeGros.*[18] In *Rodrigue*, the Court pointed out in its per curiam opinion on application for re-hearing that the indemnitor conceded before trial, and maintained the concession in oral argument before the Supreme Court, that the contract giving rise to the dispute was indeed a maritime contract. The issue decided by the Louisiana Supreme Court in *Rodrigue* was whether the Louisiana Oilfield Anti-Indemnity Act[19] applied to maritime contracts. However, that issue is not now before this Court and need not be discussed beyond the reason stated herein.

Second, even had the indemnitor in *Rodrigue, supra,* not conceded the maritime nature of the contract, a decision by the court that the contract was maritime would not have conflicted with Fifth Circuit precedent. The contract in *Rodrigue* required that the indemnitor provide a jack-up vessel and two crew boats as its primary obligation under the

[18] 563 So.2d 248 (La. 1990).

[19] LSA-R.S. 9:2780.

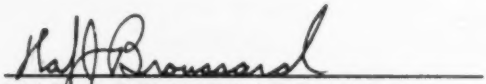
contract. The relationship of the vessels to the indemnitor's other obligations under the contract was much more than incidental in nature. A finding that such a contract is maritime in nature would come as no surprise to anyone, and, accordingly, is not in conflict with any current holdings of the Fifth Circuit.

CONCLUSION

Activities associated with the exploration and development of oil and gas are inherently non-maritime in nature and the character of such is not altered by a marine setting. Wireline services are peculiar to the oil and gas industry and are therefore non-maritime in nature. Wireline services are provided to help effectuate a successful drilling operation. This direct relationship to the exploration and development of oil and gas is present regardless of where the wireline services are rendered.

A bright line has been drawn. Wireline services are non-maritime in nature and a contract for such services is to be governed by state law. The Supreme Court can further brighten this line of certainty by denying Petitioner's application for Writ of Certiorari to the United States Court of Appeal for the Fifth Circuit.

Respectfully Submitted,



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PROOF OF SERVICE

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